IN THE

Supreme Court

of the

United States

OCTOBER TERM 1955

NO. 99

EARNEST T. BUDBERG, ET AL.,
Appellants,

V.

COUNTY OF SANGAMON, ET AL.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

APPELLANTS' BRIEF IN OPPOSITION TO MOTION TO DISMISS APPEAL

Appellees motion to dismiss alleges this court does not have jurisdiction on appeal because the Supreme Court of Illinois did not sustain the validity of the action of the Sangamon County Board of Review in increasing the assessed valuation of appellants' real property, thereby

making it 100% higher than other similar property in the taxing district, on the ground that it was authorized by a state statute.

In support of this contention they state that the Supreme Court of Illinois "held the complaint failed to show or allege that the Board of Review assessed the property of Appellants 100% higher than other similar property in Woodside Township." There is no such statement in the opinion of the Court. This explains appellees failure to refer to or quote any statement in the opinion to justify such a conclusion. A finding to that effect would be contrary to the express allegations of the complaint and the facts admitted by the pleadings. The judgment is not and could not have been based upon a finding directly in conflict with the record.

The allegations of the complaint may be found in the Abstract of Record filed in the Supreme Court of Illinois, (Rec. p. 3). Par. 6(a) commencing on page 30 of the abstract, alleges:

> "6(a). That the assessed valuation placed on Plaintiffs' property by said Board of Review is disproportionate to the assessed valuation of other real estate in Woodside Township, Sangamon County, Illinois, and that said Valuation is 100 per cent greater than the valuation placed on similar property of other persons in said Township."

These basic and material allegations of the complaint were ignored by the Supreme Court of Illinois and Appellees, although repeatedly called to their attention. We assumed upon receipt of the Court's opinion that they may have been inadvertently overlooked, since they appear on page 30 of the Abstract of Record, and the original complaint prior to its amendment is on pages 2 to 13 inc.

Therefore, in our Petition for Rehearing, we pointed out, (Rec. p. 18, Pet. p. 2) that:

"Paragraph 2 of the opinion quotes from an allegation of the Complaint, not essential in order to establish lack of uniformity. It is, that the Township Assessor in making the 1951 quadrennial assessment 'assessed the value of plaintiffs' respective properties upon an equal and uniform basis with that of other property owners in said Township.' The opinion overlooks the following material facts, upon this subject, in the Amendment to the Complaint, and admitted by defendants in electing to stand by their motion to dismiss:

> 'That the assessed valuation placed on Plaintiffs' property by said Board of Review is disproportionate to the assessed valuation of other real estate in Woodside Township, Sangamon County, Illinois, and that said Valuation is 100 per cent greater than the valuation placed on similar property of other persons in said Township.' (abst. 30, 31),

and that there are approximately 4000 real estate taxpayers in the taxing district and that the 100% increase in valuation was imposed upon approximately 400 of such real estate taxpayers."

In our jurisdictional statement the case of Chicago B. & Q. R. Co. v. Illinois ex rel. Grimwood, 200 U. S. 561, 50 L. Ed. 596, is cited in support of the proposition that a state court cannot, by resting its judgment upon some ground of local or general law, defeat the appellate jurisdiction of the Supreme Court of the United States, if a Federal right or immunity was specially set up or claimed which, if recognized and enforced, would require a different judgment. In this case the Federal question was timely and properly raised and expressly passed upon by the trial

court, and if recognized and enforced by the Supreme Court of Illinois the judgment of the trial court would have been affirmed, instead of reversed.

The Supreme Court of Illinois justified the action of the Board of Review, in response to our allegation that it was void because it deprives appellants of due process and of equal protection of the law, by stating:

"The board of appeals (review) is authorized by section 108 of the Revenue Act - - - - to:". The court then quoted the entire section of the statute referred to, and pointed out that the Board complied with the procedure therein provided in increasing the assessment of appellants' property. The Supreme Court of Illinois gave no other reason for sustaining the validity of the Board's assessment. The other questions discussed in the opinion would not have been considered, unless the Court had determined that the Board's assessment was authorized by the statute.

Appellees repeatedly mis-state the basis of our complaint by asserting that our contention that the property of appellants was assessed 100% higher than other property in the Township "is based on the allegation that the assessment made by the local assessor was uniform."

On p. 23 of our original brief (Rec. p. 5) filed in the Supreme Court of Illinois, we stated:

> "The uniformity of the assessment of the property in Woodside Township by the Tax Assessor has not been questioned and is not material. If the action of the board is void, then the assessed valuation determined by the Tax Assessor stands as the regular quadrennial assessment."

The Supreme Court of Illinois conceded that our basic contention is that the action of the board of review was void,

and the board admitted that the assessed valuation placed on appellants' property is disproportionate to the assessed valuation of other real estate in the same taxing district and 100% greater than the valuation placed on similar property of other persons, therefore it is absurd to argue, that the uniformity of the Tax Assessor's original assessed valuation is the only material issue in the case, and the disproportionate assessed valuation made by the board of review is immaterial and may be ignored in order to evade the charge that the Board's assessment violates the Federal Constitution.

We called this to the attention of the Supreme Court of Illinois on p. 19 of the Petition for Rehearing, (Rec. p. 18) by stating:—

> "The court, in stating that 'Plaintiffs have been consistent, but mistaken, in their position that the assessment made by the township assessor in 1951 was conclusive', misapprehends our position. We have never contended that the assessor's 1951 assessment was conclusive. We have been consistent in contending that since the Board's valuation is void, only the assessor's valuation remains. *However, his valuation may be ignored entirely and the tax computed on the basis of 50% of the Board's valuation, since the Board admits it is 100% higher than that of other taxpayers.*
>
> We are not asking the court to hold as asserted in the opinion 'that equity jurisdiction can be invoked by a complaint which asserts *only* the conclusion of the taxpayer that the original assessment returned by the township assessor was uniform.' Although not material, it is not a conclusion. It was stated as a fact, and defendants by their motion admit it. Neither is it the *only* basis for relief in equity. If the tax assessor had failed to value our property we would be entitled to relief in equity. The basis for relief is the Board's invalid assessment."

Since it is admitted the valuation fixed by the board is 100% greater than the valuation of similar property, and that valuation is alleged to be repugnant to the Federal Constitution, what difference can it make whether the assessment made by the local assessor is uniform? The Board could only justify its action if the local assessor valued appellees' property at 50% of the value of similar property. Par. 10 of the complaint alleges he did not do so. (Rec. p. 3, Abst. p. 7).

Exhibit "3" attached to and made part of the complaint, (Rec. p. 3, Abst. p. 20) is a letter addressed to the Board on behalf of appellants stating:

> "You know, as well as we do, that the tax assessor did not value our property at 50% of the value of similar property within Woodside Township."

We could not anticipate, that appellees would admit their action in increasing the tax assessor's valuation resulted in appellants' real property being valued 100% higher than the value of similar property, at the time the complaint was filed. Without such an admission, it may have been important to prove the uniformity of the original assessment, thereby demonstrating that the action of the Board resulted in disproportionate taxation. After appellees admitted the facts demonstrating lack of uniformity in the increased assessment, the nature of the original assessment became unimportant.

The immaterial discussion relative to the uniformity of the original assessment is solely for the purpose of evading the issue. However, since appellees' motion is entirely devoted to a persistent effort by repetition and unwarranted conclusions to convince this court that this is the issue, we feel justified in pointing out that even if such an issue was

material, there is no basis for stating that the complaint shows lack of uniformity in the original assessment. The court stated that the allegation as to the uniformity of the original assessment is qualified by a subsequent allegation that the assessor fixed the land valuations at the nearest ten dollars of the first annual rental. Appellees refer to this statement as a holding by the Supreme Court of Illinois that the assessment was not uniform. The subsequent allegation confirms, instead of negatives, the previous allegation as to the uniformity of the original assessment. In par. 11 of the complaint (Rec. 3, abst. 7), reference is made to a letter from the County Judge stating the Board had authorized him to state they would revise all lot valuations of Lake Springfield Leaseholders by *uniformly* assessing them at the nearest ten dollars of the first annual rental, and it is then alleged that the original assessment did value appellants' lots on that basis. This affirms the previous admission by appellees as to the uniformity of the original assessment, instead of qualifying that admission. To further illustrate that this is immaterial and that it is merely an attempt to evade and confuse the issue, what difference would it make if the original valuations of the unimproved property were not uniform, how could the Board's action in increasing such valuations 100% make them uniform? How could that fact justify the 100% increase in the valuations of the improvements on appellants' property?

Continuing their attack on the original assessment by the tax assessor, instead of attempting to show the validity of the Board's assessment in response to the allegation that it is repugnant to the Federal Constitution, Appellees at the close of page 5 of their Motion to Dismiss state "the assessor disregarded other material and necessary factors in fixing the fair cash value of the leasehold estates."

Of course, there is nothing in the record to support this conclusion, and no such issue was presented by the pleadings, but suppose he did, how could the Board's action, in arbitrarily increasing such valuations 100%, correct these alleged errors or supply the factors disregarded by the assessor? Even if it did accomplish this miracle, it is admitted by the pleadings in this case, *that the Board's valuation is 100% higher than the valuation of similar property within its jurisdiction,* therefore unconstitutional.

Appellees call attention to a statement in the opinion referring to appellants' property as a separate class of property. This might be proper in discussing the merits, but not in determining jurisdiction of this appeal. The statute in question makes no classification of property for tax purposes, does not attempt to authorize anyone else to do so, the Board did not attempt to justify its assessment upon the ground that appellants' property was in a different class, in fact admitted it was 100% higher than *similar* property. The pleadings make no reference to or suggestion that the property involved is such that a separate classification for tax purposes could be justified. If such a question should be deemed material in presenting this case on the merits, we are confident such an attempted classification would be considered arbitrary, and an unwarranted attempt to evade constitutional requirements of due process and equal protection of the law.

CONCLUSION

Appellees only attempt to distinguish one of the many cases cited in our Jurisdictional Statement from the situation here presented. They state Hanover Fire Ins. Co. v. Carr, 272 U. S. 494, 71 L. Ed. 372, reversing a decision of the Supreme Court of Illinois, did not involve the question of the sufficiency of the pleading to present the question of whether the Statute authorized an assessment in violation of the Fourteenth Amendment. *Neither does this case.*

They further state that in the Hanover case the Supreme Court of Illinois held that the Statute authorized an assessment which was non-uniform and violated the equal protection clause of the Fourteenth Amendment. The Supreme Court of Illinois, in this case, held that section 108 of the Revenue Act of Illinois authorized an assessment which was 100% higher than the assessment of similar property.

Appellees attempt to distinguish the Hanover case illustrates its analogy to this case to such an extent that it not only indicates jurisdiction of this appeal, but it should be ample authority for reversal of the judgment of the Supreme Court of Illinois. That court there attempted to evade the requirements of the Fourteenth Amendment to the Constitution of the United States by justifying the assessment on the ground that it was imposed upon a separate class of property.

We respectfully submit that all of the cases cited in our Jurisdictional Statement sustain the jurisdiction of this court to review the judgment of the Supreme Court of Illinois on this appeal. We have been unable to find any

authority to the contrary and appellees have failed to suggest any.

Respectfully submitted,

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